

**Order below Exhibit 26 in R.C.C. no. 24 of 2021**

(State Vs. Abhijeet Gorad)

(CNR NO. MHSN130001642021)

The present application is filed by the learned APP under Section 216 of Code of Criminal Procedure.

2. The learned APP contended that the Investigating Officer Shri. M. S. Mahadik has filed the charge-sheet in the present case under Sections 341, 325, 324, 323, 504, 506 read with 34 of the Indian Penal Code. On perusal of the charge-sheet, it is apparent that the accused no. 1 has caused grievous hurt to the informant by means of dangerous weapon namely stone on her nose. The said injury on his nose is mentioned as 'DISPLACED NASAL BONE FRACTURE' in the medical certificate and it is a grievous hurt. The weapon i.e. stone used is dangerous weapon. Hence prayed to add charge under Section 326 of Indian Penal Code against the accused.

3. The accused resisted the application contending that the present application is not tenable and the learned APP has filed an illegal application. The accused no. 1 has not caused injury to the informant on her nose by use of a stone. The said fact is not mentioned in the First Information Report also and the said weapon i.e. stone is not seized. The medical certificate is also not on record. The learned APP has built a concocted story and it is not admitted by the accused. There was never a fracture to the nose of the informant. Hence the charge under Section 326 of Indian Penal Code cannot be framed against the accused. The Investigating Officer after procuring the medical certificate has added Section 325 of Indian Penal Code vide its report dated 30.12.2020. Hence prayed to reject the application.

4. Perused application and say. Heard.
5. As per the Section 326 of the The Indian Penal code,  
320. Grievous hurt – The following kinds of hurt only are designated as ‘grievous’ :
  - First – Emasculation
  - Secondly – Permanent privation of the sight of either eye
  - Thirdly – Permanent privation of the hearing of either ear.
  - Fourthly – Privation of any member or joint.
  - Fifthly - Destruction or permanent impairing of the powers of any member or joint
  - Sixthly – Permanent disfiguration of the head or face
  - Seventhly – Fracture or dislocation of a bone or tooth.
  - Eighthly – Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in sever bodily pain, or unable to follow his ordinary pursuits.

The essential ingredients to attract Section 326 of The Indian Penal Code are :

1. Voluntarily causing a hurt, 2. Hurt caused must be a grievous hurt, 3. The grievous hurt must have been caused by dangerous weapons or means.

6. The medical certificate explicits the said injury on the nose as ‘DISPLACED NASAL BONE FRACTURE’. In the instant case the question whether the weapon used in the incident may be treated as a dangerous weapon or not will be determined only after recording the evidence. In this eventuality the application deserves to be allowed.

Accordingly, the following order is passed :

**ORDER**

- 1) The application is allowed.
- 2) The charge under Section 326 of Indian Penal Code be framed against the accused.

Sd/-

Place : Kadegaon  
Date : 05.12.2023

(J. T. Koregaonkar)  
Judicial Magistrate (F.C.), Kadegaon.